?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 25.10.2018
*CORAM
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAYAN
+Crl.O.P.(MD)No.10671 of 2014
and
Crl.M.P.(MD)No.1 and 2 of 2014
#Nellikuppam Pugalenthi
... Petitioner

Vs.

$The Public Prosecutor,
Tirunelveli. ...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the complaint in Special Case No.94 of 2014 on the file of Hon-ble Court of Sessions Judge, Tirunelveli and quash the same as illegal.

!For Petitioner : Mr.R.M.Anbunidhi

^For Respondent :

:ORDER

This Criminal Original Petition has been filed to quash proceedings in Special Case No.94 of 2014 on the file of the learned District and Sessions Judge, Tirunelveli, for taking cognizance offence under Section 500 I.P.C filed under Section 199(2) of Cr.P.C.

2.The case of the prosecution is that the petitioner, who is a DMK Party Headquarters Speaker, started the speech in the meeting, the petitioner made defamatory speech against the Hon-ble Chief Minister of Tamil Nadu Selvi.J.Jayalalitha on 22.10.2013 at Thiruvallur Thial, Achamputhur, Tirunelveli District at about 19.15 hours to 22.00 hours.

2. The learned counsel for the petitioner submitted that the complaint filed by the respondent for the offence punishable under Section 199 (2) Cr.P.C is legally not maintainable and the same is liable to be dismissed. He would further submit that the facts narrated in the complaint never reflects that the petitioner had made defamatory speech in respect of conduct of Chief Minister of Tamil Nadu while discharging of her public function. The entire averments in the complaint only indicated about the public problem alone not the function of the Chief Minister of Tamil Nadu.

3.He also contended that Section 199(2) Cr.P.C, clearly enumerates that the public prosecutor can file complaint in writing if any offence have been committed against public servant who employed in connection with the affairs of the Union or State in respect of his conduct in the discharge of his public function. The reading of the complaint never indicated that the

petitioner had made defamatory speech about the public function of the Chief Minister of Tamil Nadu. Therefore, he prayed for quash the criminal proceedings.

4.The learned Public Prosecutor submitted that on 22.10.2013 at Thiruvallur Thial, Achamputhur, Tirunelveli District, after obtaining due permission from the police, the DMK Party conducted a public meeting from 19.15 hours to 22.00 hours. When the police officials was on bandobust, at the meeting venue, various speakers of DMK party have spoken and particularly, the petitioner herein made defamatory speech against the Hon-ble Chief Minister Selvi.J.Jayalalitha. It is highly defamatory and contains imputations which are per se defamatory against the Hon-ble Chief Minister of Tamil Nadu in respect of her conduct in the discharge of her public functions. The above said defamatory remarks are not only devoid of truth but intentionally made not in good faith and against the interest of the public good. Thereby, the above accused has committed an offence punishable under Section 500 I.P.C. Hence, the sought for dismissal of the quash petition.

5.Heard both side.
6.On perusal of the complaint filed by the respondent, it would reveals that the petitioner herein defamed the Hon-ble Chief Minister of Tamil Nadu personally and there is no words pertained to her public function. In this regard, the constitutional Bench of Hon-ble Supreme Court of India held in the judgment reported in CDJ 2018 SC 391 in the case of K.K.Mishra Vs. The State of Madhya Pradesh & another. The relevant portions of the judgment which reads as under:
?7. Section 199 (2) Cr.P.C. provides for a special procedure with regard to initiation of a prosecution for offence of defamation committed against the constitutional functionaries and public servants mentioned therein. However, the offence alleged to have been committed must be in respect of acts/conduct in the discharge of public functions of the concerned functionary or public servant, as may be. The prosecution under Section 199 (2) Cr.P.C is required to be initiated by the Public Prosecutor on receipt of a previous sanction of the Competent Authority in the State/Central Government under Section 199 (4) Cr.P.C of the code. Such a complaint is required to be filed in a Court of Sessions that is alone vested with the jurisdiction to hear and try the alleged offence and even without the case being committed to the said court by a subordinate Court. Section 199(2)Cr.P.C. read with section 199(4)Cr.P.C., therefore, envisages a departure from the normal rule of initiation of a complaint before a Magistrate by the affected persons alleging the offence of defamation. The said right, however, is saved even in cases of the category of persons mentioned in sub~section (2) of Section 199 Cr.P.C. by sub~section (6) thereof.
8. The rationale for the departure from the normal rule has been elaborately dealt with by this Court in a judgment of considerable vintage in P.C. Joshi and another vs. The State of Uttar Pradesh1[paragraph 9]. The core reason which this Court held to be the rationale for the special procedure engrafted by Section 199(2) Cr.P.C. is that the offence of defamation committed against the functionaries mentioned therein is really an

offence committed against the State as the same relate to the discharge of public functions by such functionaries. The State, therefore, would be rightly interested in pursuing the prosecution; hence the special provision and the special procedure.

P.C. Joshi (supra), however, specifically dealt with the provisions of Section 198 B of the Code of Criminal Procedure, 1898 (?old Code?) which are pari materia with the provisions of Section 199 of the Cr.P.C. (?new Code?).

9. The above would require the Court to consider as to whether the statements made by the accused appellant in the Press Conference which have been taken note of in the order dated 24th June, 2014 granting sanction/ permission can legitimately be said to be attributable or connected with the discharge of public functions of the office of the Hon?ble Chief Minister. In other words, whether the said statements have any reasonable nexus with the discharge of Official duties by the Hon?ble Chief Minister.

10. The problem of identification and correlation of the acts referred to in an allegedly defamatory statement and those connected with the discharge of public functions/official duties by the holder of the public office is, by no means, an easy task. The sanction contemplated under Section 199(4) Cr.P.C. though in the opposite context i.e. to prosecute an offender for offences committed against a public servant may have to be understood by reference to the sanction contemplated by Section 197 Cr.P.C. which deals with sanction for prosecution of a public servant. There is a fair amount of similarity between the conditions precedent necessary for accord of sanction in both cases though the context may be different, indeed, the opposite. While dealing with the requirement of sanction under Section 197 Cr.P.C. this Court in Urmila Devi vs. Yudhvir Singh (2013) 15 SCC 624 had taken the following view which may have some relevance to the present case.

?59. The expression ?official duty? would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough. A reasonable connection between his duties as a public servant and the acts complained of is what will determine whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant within the meaning of that expression under Section 197 of the Code.?

11. If the allegedly defamatory statements, already extracted, in respect of which sanction has been accorded to the Public Prosecutor to file the complaint against the appellant under Section 199 (2)Cr.P.C. by the order dated 24th June, 2014 are to be carefully looked into, according to us, none of the said statements, even if admitted to have been made by the appellant, can be said to have any reasonable connection with the discharge of public duties by or the office of the Hon?ble Chief Minister. The appointment of persons from the area/place to which the wife of the Hon?ble Chief Minister

belongs and the making of phone calls by the relatives of the Hon?ble Chief Minister have no reasonable nexus with the discharge of public duties by or the office of the Hon?ble Chief Minister. Such statements may be defamatory but then in the absence of a nexus between the same and the discharge of public duties of the office, the remedy under Section 199(2) and Cr.P.C. will not be available. It is the remedy saved by the provisions of sub~ section (6) of Section 199 Cr.P.C. i.e. a complaint by the Hon?ble Chief Minister before the ordinary Court i.e. the Court of Magistrate which would be available and could have been resorted to.

7. In view of the above ratio decided by the Hon-ble Supreme Court of India, the complaint has been filed by the respondent herein complaining that the petitioner has made a defamatory speech in the public function about the Honourable Chief Minister of Tamil Nadu. Whereas, it is seen from the complaint that the petitioner has never made any defamatory speech about the Honourable Chief Minister of Tamil Nadu in the public function. The speech made by the petitioner would not reveal that he defamed the Honourable Chief Minister of Tamil Nadu personally. Therefore, the complaint lodged against the petitioner under Section 199(2) Cr.P.C filed by the respondent cannot be sustained.

8.Accordingly, this Criminal Original Petition is allowed and the proceedings in Special Case No.94 of 2014 on the file of learned Sessions Judge, Tirunelveli is hereby quashed. Consequently, connected miscellaneous petitions are closed.